



APPENDIX A

218.01 Motor vehicle dealers; salesmen; sales finance companies, licenses; fees; regulations: coercion; subsidies; penalties. (1) Definitions. In this section, unless the context otherwise requires, the following words and terms shall have the following meanings:

(a) "Motor vehicle dealer" means any person, firm or corporation, not excluded by paragraph (b) of this subsection who:

1. For commission, money or other thing of value, sells, exchanges, buys or rents; or offers or attempts to negotiate a sale or exchange of an interest in motor vehicles; or,

2. Who is engaged wholly or in part in the business of selling motor vehicles whether or not such motor vehicles are owned by such person, firm or corporation.

(b) The term "motor vehicle dealer" does not include:

1. Receivers, trustees, administrators, executors; guardians or other persons appointed by or acting under the judgment or order of any court; or

2. Public officers while performing their official duties; or

3. Employees of persons, corporations or associations enumerated in subdivisions 1 and 2 of this paragraph, when engaged in the specific performance of their duties as such employees.

(c) "Motor vehicle salesman" means any person who

is employed as a salesman by a motor vehicle dealer to sell motor vehicles.

(d) "Sales finance company" means and includes any person, firm or corporation engaging in this state in the business, in whole or in part, of acquiring by purchase or by loan on the security thereof, or otherwise, retail instalment contracts from retail sellers in this state, including any motor vehicle dealer who shall carry or retain for more than thirty days any retail instalment contracts acquired by him in his retail sales of motor vehicles.

(e) "Retail instalment contract" or "instalment contract" means and includes every contract to sell one or more motor vehicles at retail, in which the price thereof is payable in one or more instalments over a period of time and in which the seller has either retained title to the goods or has taken or retained a security interest in the goods under a form of contract designated either as a conditional sale, chattel mortgage or otherwise.

(f) "Retail seller" means a person, firm or corporation selling or agreeing to sell one or more motor vehicles under a retail instalment contract to a buyer for the latter's personal use or consumption thereof.

(g) "Retail buyer" means a person, firm or corporation buying or agreeing to buy one or more motor vehicles from a retail seller under a retail instalment contract.

(h) "Cash price" means the retail seller's price in dollars for the sale of the goods, and the transfer of unqualified title thereto, upon payment of such price in cash or the equivalent thereof.

(i) "Finance charge" means that part of the total price in the retail instalment contract of sale in excess of the case price, and includes, unless otherwise specified, the insurance premium, if any.

(j) The term "commission" means the state banking

commission and including any member or members thereof or any duly authorized deputy named or appointed by such commission to perform any function in the administration or enforcement of this section.

(k) "Motor vehicle" means any motor driven vehicle required to be registered under section 85.01.

(l) "Manufacturer" means any person resident or nonresident in this state who manufactures or assembles motor vehicles in this state.

(a) "Distributor" or "wholesaler" means a person resident or non-resident in this state, who in whole or part, sells or distributes motor vehicles to motor vehicle dealers in this state, or who maintains distributor representatives in this state.

(n) "Factory branch" means a branch office maintained in this state, by a person who manufactures or assembles motor vehicles, for the sale of motor vehicles to distributors, or for the sale of motor vehicles to motor vehicle dealers or for directing or supervising in whole or part, its representatives in this state.

(o) "Distributor branch" means a branch office similarly maintained by a distributor or wholesaler for the same purposes.

(p) "Factory representative" means a representative employed by a person who manufactures or assembles motor vehicles or by a factory branch, for the purpose of making or promoting the sale of its motor vehicles, or for supervising or contacting its dealers or prospective dealers.

(q) "Distributor representative" means a representative similarly employed by a distributor, distributor branch, or wholesaler.

(r) "Person" means a person, firm, corporation or association.

(2) Licenses, How Granted. (a) No motor vehicle dealer, motor vehicle salesman, or sales finance company shall engage in business as such in this state without a license therefor as provided in this section. If any motor vehicle dealer acts as a motor vehicle salesman he shall secure a motor vehicle salesman's license in addition to a license for motor vehicle dealer.

(am) No manufacturer of motor vehicles, or factory branch, or distributor or distributor branch shall engage in business as such in this state without a license therefor as provided in this section.

(an) No factory representative or distributor representative shall engage in business as such in this state without a license therefor as provided in this section.

(2) (b) Application for license shall be made to the commission, at such time, in such form and contain such information as the commission shall require and shall be accompanied by the required fee. *The commission may require in such application, or otherwise, information relating to the applicant's solvency, his financial standing or other pertinent matter commensurate with the safeguarding of the public interest in the locality in which said applicant proposes to engage in business, all of which may be considered by said commission in determining the fitness of said applicant to engage in business as set forth in this section.*

(c) All licenses shall be granted or refused within thirty days after application therefor, and shall expire, unless sooner revoked or suspended, on December thirty-first of the calendar year for which they are granted.

(d) The license fee for each calendar year, or part thereof, shall be as follows, effective January 1, 1938:

1. For motor vehicle dealers, five dollars for each office or branch or agent thereof, plus one dollar for a supplemental license for each used car lot not immediately adjacent to the office or to a branch.

2. For motor vehicle manufacturers, five dollars; and for each factory branch in this state, five dollars.

3. For distributors or wholesalers, the same as for dealers.

4. Any person licensed under subdivision 2 or 3 next preceding, may also operate as a motor vehicle dealer, without any additional fee or license.

5. For motor vehicle salesmen, two dollars.

6. For factory representative, or distributor branch representative, two dollars.

7. For sales finance companies on the basis of the gross volume of purchases of retail sales contracts of motor vehicles sold in this state for the twelve months immediately preceding October thirty-first of the year in which the application for license is made, as follows: On a gross volume of twenty-five thousand dollars or less, twenty-five dollars; on a gross volume of over twenty-five thousand and not over one hundred thousand dollars, fifty dollars; on each one hundred thousand dollars over one hundred thousand dollars and up to five hundred thousand dollars, an additional fifteen dollars; on each one hundred thousand dollars over five hundred thousand dollars and up to one million dollars, an additional ten dollars; and on each one hundred thousand dollars over one million dollars, an additional five dollars. No extra charge shall be made for branch licenses for sales finance companies. Gross volume shall be based on the unpaid balance of the retail contracts.

8. For motor vehicle dealers, who operate as a sales finance company, the same as sales finance companies, except for the first five thousand dollars of gross volume, no fees; on each one thousand dollars of gross volume, or part thereof, over five thousand dollars and up to twenty-five thousand dollars one dollar.

(e) The licenses of dealers, manufacturers, factory branches, distributors, distributor branches and sales finance companies shall specify the location of the office or branch and must be conspicuously displayed there. In case such location be changed, the commission shall endorse the change of location on the license without charge if it be within the same municipality. A change of location to another municipality shall require a new license, except for sales finance companies.

(f) Every salesman, factory representative or distributor representative shall carry his license when engaged in his business, and display the same upon request. The license shall name his employer, and in case of a change of employer, the salesman shall immediately mail his license to the commission who shall endorse such change on the license without charge.

(g) Every sales finance company shall be required to procure a salesman's license for itself or its employees in order to sell motor vehicles repossessed by it.

(h) The commission may require any licensee to furnish and maintain a bond in such form, amount and with such sureties as it shall approve, but not in excess of five thousand dollars, conditioned upon such licensee complying with the provisions of this section and the lawful orders of the commission hereunder.

(i) Application for dealers' or finance companies' licenses shall be in duplicate and shall contain such information as the secretary of state may require under

chapter 85. The commission, upon granting a license to a dealer or finance company, shall promptly certify that fact to the secretary of state on the duplicate application filed; and no motor vehicle dealer or sales finance company, unless so licensed, shall be permitted to register or receive or use license plates under section 85.02. Any sales finance company licensed hereunder shall have all the rights accorded to and be liable to all the penalties imposed on motor vehicle dealers under section 85.02.

(3) Licenses, How Denied, Suspended or Revoked.

(a) A license may be denied, suspended or revoked on the following grounds:

1. Proof of unfitness of applicant.
2. Material misstatement in application for license.
3. Filing a materially false or fraudulent income tax return as certified by the tax commission.
4. Wilful failure to comply with any provision of this section or any rule or regulation promulgated by the commission under this section.
5. Wilfully defrauding any retail buyer to the buyer's damage.
6. Wilful failure to perform any written agreement with any retail buyer.
7. Failure or refusal to furnish and keep in force any bond required.
8. Having made a fraudulent sale, transaction or repossession.
9. Fraudulent misrepresentation, circumvention or concealment through whatsoever subterfuge or device of any of the material particulars or the nature thereof required hereunder to be stated or furnished to the retail buyer.
10. Employment of fraudulent devices, methods or

practices in connection with compliance with the requirements under the statutes of this state with respect to the retaking of goods under retail instalment contracts and the redemption and resale of such goods.

11. Having indulged in any unconscionable practice relating to said business.

12. Having charged interest in excess of fifteen per cent per annum.

13. Having sold a retail instalment contract in this state to a sales finance company not licensed hereunder.

14. Having violated any law relating to the sale, distribution or financing of motor vehicles.

15. Being a manufacturer of motor vehicles, factory branch, distributor, field representative, officer, agent or any representative whatsoever of such motor vehicle manufacturer or factory branch, who has induced or coerced or attempted to induce or coerce any automobile dealer to accept delivery of any motor vehicle or vehicles, parts or accessories therefor, or any other commodities which shall not have been ordered by said dealer.

16. Being a manufacturer of motor vehicles, factory branch, distributor, field representative, officer, agent, or any representative whatsoever of such motor vehicle manufacturer or factory branch, who has attempted to induce or coerce, or has induced or coerced, any automobile dealer to enter into any agreement with such manufacturer, factory branch or representative thereof, or to do any other act unfair to said dealer, by threatening to cancel any franchise existing between such manufacturer, factory branch, or representative thereof and said dealer.

17. Being a manufacturer, factory branch, distributor, field representative, officer, agent, or any representative whatsoever of such motor vehicle manufacturer or factory branch, who has unfairly, without due regard to the equities of said dealer and without just provocation, cancelled the franchise of any motor vehicle dealer.

(b) The commission may without notice deny the application for a license within thirty days after receipt thereof by written notice to the applicant, stating the grounds for such denial. Upon request by the applicant, whose license has been so denied, the commission shall set the time and place of hearing a review of such denial, the same to be heard with reasonable promptness.

(c) No license shall be suspended or revoked except after a hearing thereon. The commission shall give the licensee at least five days' notice of the time and place of such hearing. The order suspending or revoking such license shall not be effective until after ten days' written notice thereof to the licensee, after such hearing has been had; except that the commission, when in its opinion the best interest of the public or the trade demands it, may suspend a license upon not less than twenty-four hours notice of hearing and with not less than twenty-four hours notice of the suspension of the license.

(d) The commission may inspect the pertinent books, records, letters and contracts of a licensee relating to any written complaint made to it against such licensee. If such licensee is found guilty of violating this section or any lawful order of the commission, the actual cost of each such examination shall be paid by such licensee so examined within thirty days after demand therefor by the commission, and the commission may maintain an

action for the recovery of such costs in any court of competent jurisdiction.

(e) If a licensee is a firm or corporation, it shall be sufficient cause for the denial, suspension or revocation of a license that any officer, director or trustee of the firm or corporation, or any member in case of a partnership, has been guilty of any act or omission which would be cause for refusing, suspending or revoking a license to such party as an individual. Each licensee shall be responsible for the acts of any or all of his salesmen while acting as his agent, if such licensee approved of or had knowledge of said acts or other similar acts and after such approval or knowledge retained the benefit, proceeds, profits or advantages accruing from said acts or otherwise ratified said acts.

(f) Any licensee or other person in interest being dissatisfied with an order of the commission may commence an action in the circuit court for Dane county against the commission as defendant to vacate and set aside such order on the ground that such order is unlawful or unreasonable. In any such action the complaint shall be served with the summons.

(g) The provisions of sections 214.08, 214.09, 214.11, 196.35, 196.36 and 196.42 to 196.47, as far as applicable, shall apply to appeals from the orders of the commission, and shall apply to hearings before the commission until such time as the commission shall establish its rules and regulations as to such hearings.

(4) Advisory Committee. The commission may appoint annually one or more local advisory committees and one general advisory committee, each consisting of not more than nine members. The committees upon request of the commission may advise and assist the commission in the administration of this section. The mem-

bers of said committees shall receive no compensation for their services or expenses.

(5) Rules and Regulations. (a) The banking commission shall promote the interests of the retail buyers of motor vehicles. It shall have power to define unfair practices in the motor vehicle industry and trade between licensees or between any licensees and retail buyers of motor vehicles.

(b) The commission shall have the power in hearings and trials arising under this section to determine the place, in the state of Wisconsin, where they shall be held; to subpoena witnesses; to take depositions of witnesses residing without the state, in the manner provided for in civil actions in courts of record; to pay such witnesses the fees and mileage for their attendance as is provided for witnesses in civil actions in courts of record; and to administer oaths. Whenever a hearing or trial shall be held by a member of the commission or by an examiner, he shall report his findings in writing to the entire commission, which shall thereupon make its rulings and orders.

(c) The commission may make such rules and regulations as it shall deem necessary or proper for the effective administration and enforcement of this section, the same to be effective when published at least once in the official state paper, but no licensee shall be subject to examination or audit by the commission except as provided in paragraph (d) of subsection (3) of this section.

(6) Instalment Sales. (a) Every retail instalment sale shall be evidenced by an instrument in writing, which shall contain all the agreements of the parties and shall be signed by the buyer.

(b) Prior to or concurrent with any instalment sale, the seller shall deliver to the buyer a written statement

describing clearly the motor vehicle sold to the buyer, the cash sale price thereof, the cash paid down by the buyer, the amount credited the buyer for any trade-in and a description thereof, the amount of the finance charge, the amount of any other charge specifying its purpose, the net balance due from the buyer, the terms of the payment of such net balance and a summary of any insurance coverage to be effected. The commission may determine the form of such statement to be included therein. In the event that a written order is taken from a prospective purchaser in connection with any such instalment sale, then shall the written statement above provided for be given to such purchaser prior to or concurrent with the signing of such order by such purchaser.

(c) Prior to five days after completion of any instalment sale, the seller shall mail or deliver to the buyer a true and complete copy of the instalment sale contract and any note or notes given in connection therewith.

(d) A violation of paragraphs (a) or (b) of this subsection shall bar recovery of any finance charge or any interest on the deferred balance by the seller, or an assignee of the seller who, at the time of the assignment, had knowledge of such violation, in any suit upon a sales contract arising from the sale where such violation occurred.

(e) Prior to thirty days after acquisition of any retail instalment contract from a retail seller, every finance company shall mail or deliver to the retail buyer a notice in writing that it has acquired the retail instalment contract from the retail seller thereunder, and shall also mail or cause to be mailed therewith a statement of the particulars of the retail instalment contract price, hereinbefore required to be stated by the retail seller, in accordance with the finance company's records respecting such

particulars, including the amount of the finance charge, which may include the cost of insurance, if any. Every finance company, if insurance is provided by it, shall also within the time stated send or cause to be sent to the retail buyer a policy or policies or certificate of insurance clearly setting forth the exact nature of the insurance coverage and the amount of the premiums which shall not exceed the rates as fixed in the published manual of a recognized standard rating bureau included in the finance charge, if such type of insurance be listed.

(em) In event the dealer shall finance the instalment sale contract, the commission may permit him to combine the information required by paragraphs (b) and (e) last above in one statement under such rules and regulations as the commission may from time to time prescribe.

(f) Any retail buyer of a motor vehicle, resident in the state of Wisconsin, at the time of purchase, under a retail instalment contract, shall have a valid defense in any action or proceeding at law to enforce said contract by any finance company not licensed hereunder which has purchased or otherwise acquired such contract, if such finance company has wilfully failed or refused to comply with paragraph (e) of this subsection.

(g) Any retail buyer of a motor vehicle resident of the state of Wisconsin at the time of the purchase thereof, under a retail instalment contract made in this state, shall have a valid defense against the recovery of the principal, finance charges, interest and other fees included in such contract, in any action or proceeding at law to enforce said contract by any person, firm or corporation who has purchased or otherwise acquired said contract, if such person, firm or corporation has failed or refused prior to such purchase or acquisition to be licensed as a sales fi-

nance company under the provisions of this section, and such person, firm or corporation is actually engaged, in this state, in business, in whole or in part as a sales finance company as defined in this section.

(h) No licensee shall charge interest in excess of fifteen per cent per annum.

(7) Prohibited Acts. (a) No manufacturer of motor vehicles, no wholesaler or distributor of motor vehicles, and no officer, agent or representative of either shall induce or coerce, or attempt to induce or coerce, any retail motor vehicle dealer or prospective retail motor vehicle dealer in this state to sell, assign or transfer any retail instalment sales contract, obtained by such dealer in connection with the sale by him in this state of motor vehicles manufactured or sold by such manufacturer, wholesaler or distributor, to a specified sales finance company or class of such companies, or to any other specified person, by any of the acts or means hereinafter set forth, namely:

1. By any statement, suggestion, promise or threat that such manufacturer, wholesaler or distributor will in any manner benefit or injure such dealer, whether such statement, suggestion, threat or promise is express or implied, or made directly or indirectly.

2. By any act that will benefit or injure such dealer.

3. By any contract, or any express or implied offer of contract, made directly or indirectly to such dealer, for handling such motor vehicles, on the condition that such dealer sell, assign or transfer his retail instalment contract thereon, in this state, to a specified sales finance company or class of such companies, or to any other specified person.

4. By any express or implied statement or representation, made directly or indirectly, that such dealer is un-

der any obligation whatsoever to sell, assign or transfer any of his retail sales contracts, in this state, on motor vehicles manufactured or sold by such manufacturer, wholesaler or distributor to such sales finance company, or class of companies, or other specified person, because of any relationship or affiliation between such manufacturer, wholesaler or distributor and such finance company or companies or such specified person or persons.

(b) Any such statements, threats, promises, acts, contracts or offers of contracts, set forth in paragraph (a) of this subsection are declared unfair trade practices and unfair competition and against the policy of this state, are unlawful and are prohibited.

(c) No sales finance company, and no officer, agent or representative thereof, shall induce or coerce or attempt to induce or coerce any retail motor vehicle dealer to transfer to such sales finance company any of the retail instalment sales contracts in this state of such dealer on any motor vehicle by any of the following acts or means, namely:

1. By any statement or representation, express or implied, made directly or indirectly, that the manufacturer, wholesaler or distributor of such motor vehicles will grant such dealer a franchise to handle such motor vehicles if such dealer shall sell, assign or transfer all or part of such retail sales contracts to such sales finance company.

2. By any statement or representation, express or implied, made directly or indirectly, that the manufacturer, wholesaler or distributor of such motor vehicles will in any manner benefit or injure such dealer if such dealer shall or shall not sell, assign or transfer all or part of such retail sales contracts to such sales finance company.

3. By an express or implied statement or representa-

tion made directly or indirectly, that there is an express or implied obligation on the part of such dealer to so sell, assign or transfer all or part of such retail sales contracts on such motor vehicles to such sales finance company because of any relationship or affiliation between such sales finance company and the manufacturer, wholesaler or distributor of such motor vehicles.

(d) Any such statement or representations set forth in paragraph (c) of this subsection are declared to be unfair trade practices and unfair competition and against the policy of this state, are unlawful and are prohibited.

(e) Any retail motor vehicle dealer who, pursuant to any inducement, statement, promise or threat hereinbefore declared unlawful, shall sell, assign or transfer any or all of his retail instalment contracts shall not be guilty of any unlawful act and may be compelled to testify to each such act.

(f) No manufacturer shall directly or indirectly pay or give, or contract to pay or give, anything of service or value to any sales finance company licensee in this state, and no such licensee in this state shall accept or receive or contract or agree to accept or receive directly or indirectly any payment or service of value from any manufacturer, if the effect of the payment or giving of any such thing of service or value by the manufacturer, or the acceptance or receipt thereof by the sales finance company licensee, may be to lessen or eliminate competition or tend to grant an unfair trade advantage or create a monopoly in the licensee who accepts or receives the payment, thing or service of value or contracts or agrees to accept or receive the same.

(g) It shall be unlawful for any motor vehicle dealer or motor vehicle salesman to change the speedometer reading of any used vehicle offered for sale.

(h) It shall be unlawful for any motor vehicle dealer or motor vehicle salesman to refuse to furnish, upon request of a prospective purchaser, the name of the previous owner of any used car offered for sale.

(8) Penalties. Any person, firm or corporation violating any of the provisions of this section shall be deemed guilty of misdemeanor and upon conviction thereof shall be punished as follows:

1. For violation of any provision of subsection (7) of this section, by a fine of not exceeding ten thousand dollars or by imprisonment in the county jail for not to exceed one year or by both such fine and imprisonment.

2. For violation of subsection (2) of this section, by a fine not exceeding five hundred dollars or by imprisonment in the county jail for a period not to exceed ninety days, or by both such fine and imprisonment.

(9) Severability. If any provision of this section or the application thereof to any person or circumstance is held unconstitutional, the remainder of the section and the application of such provision to other persons or circumstances shall not be affected thereby. (1935 c. 474)